



Paper No. 27

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OFFICE OF PETITIONS

In re Application of  
Reeh, et al.  
Application No. 09/221,789  
Filed: December 28, 1998  
Attorney Docket No. 12406-003001

ON PETITION

This is a decision on the petition filed on September 10, 2001, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a proper response to the non-final Office action, mailed February 15, 2001, which set a shortened statutory period for reply of three (3) months. Petitioner replied with a Continued Prosecution Application (CPA) on August 15, 2001 (made timely by a three month extension of time). Because an earlier CPA had been filed on or after May 29, 2000<sup>1</sup>, the CPA was instead treated as a Request for Continued Examination (RCE). However, the RCE was improper because, under 37 CFR 1.114, an RCE is not permitted unless prosecution in the application is closed.<sup>2</sup> Moreover, the RCE was not accompanied by the required submission. No further response having been received, the above-identified application became abandoned on August 16, 2001. Petitioner filed an amendment on September 10, 2001 (certificate of transmission dated August 24, 2001), after the application had already gone abandoned. Accordingly, the amendment was not entered. A Notice of Improper RCE was mailed on August 29, 2001. The instant petition precedes the mailing of a Notice of Abandonment.

The petitioner has met the requirements to revive the above-identified application, pursuant to 37 CFR 1.137(b). Petitioner submitted the required reply to the non-final Office action in the form of an amendment, paid the petition fee, and made a statement of unintentional delay. 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3). The statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

Because the RCE filed on August 15, 2001 was not a proper response to the non-final Office action, the RCE and additional

<sup>1</sup> The earlier CPA was filed on September 12, 2000.

<sup>2</sup> See *Request for Continued Examination Practice and Changes to Provisional Application Practice*; Final Rule, 65 FR 50092 (August 16, 2000).

claims fees, totaling \$908.00, has been refunded to Deposit Account 06-1050.

The application file is being forwarded to Technology Center 2800 for consideration of petitioner's amendment, filed September 10, 2001.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

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